

At a Glance:

- ▶ New Office Additions
- ▶ EPA TAS Reinterpretation
- ▶ EPA Treaty Consultation
- ▶ Tribal Lagoons
- ▶ Climate Change Update

## Kickapoo Environmental Office The Green Clan

Working Together for a Better Community

### 'Tribes as States' Reinterpretation

The U.S. EPA is revisiting what it means for Indian tribes to be treated as states for purposes of the CWA

By Eric Sheets, Director

Treatment as States (TAS) is a status given to certain federally-recognized Indian tribes, where a tribe is treated by the Environmental Protection Agency (EPA) in a similar manner as states for the implementation and management of certain environmental programs. Clean Water Act (CWA) rules concerning TAS are currently under review and the EPA is proposing a reinterpretation of them that may provide greater ability for tribes to exercise sovereignty and to have greater control of their water quality.

The CWA is the primary federal statute that addresses water pollution in the United States. It establishes a number of programs designed to restore and protect the quality of the nation's waters by eliminating the discharge of pollutants into surface waters. The teeth of this law consists of two general components: 1) end-of-pipe effluent limitations for the discharge of specific pollutants, and 2) water quality standards (WQS) established for individual water bodies.

The second component dealing with WQS is the one that's currently under review by

the EPA. Under the CWA, the EPA sets nationwide WQS that are enforced through a permitting program. An Indian tribe may develop its own WQS that may be enforced in place of the EPA's; and these standards may be more stringent than those set by the EPA. If a tribe's WQS are approved by the EPA, it may assume the role of issuing permits under Sec. 401 of the CWA to applicants whose activities may result in a discharge into navigable waters.

To achieve TAS status, under Section 518 of the CWA, an Indian tribe must meet the following requirements:

1. The tribe is federally recognized and has a reservation;
2. The tribe has a governing body carrying out substantial governmental duties and powers;
3. The functions exercised by the Indian tribe pertain to the management and protection of water resources within the reservation; and
4. The Indian tribe is expected to be capable of carrying out the functions of the program.

(cont. on pg. 2)

#### Upcoming Calendar

Oct 5 – Tribal elections

Oct 12 – Indigenous Peoples' Day

Oct 31 – Halloween

Nov 17 – Prescribed Fall Burn Workshop

Nov 26 – Thanksgiving

Dec 25 – Christmas





## TAS Reinterpretation continued

Among the various statements necessary to support each of these requirements, is one by a tribe describing the basis for its assertion of authority. The EPA has taken this regulatory requirement to mean that a tribe seeking TAS status to enforce their WQS on tribal lands owned by nonmembers must show inherent authority to regulate non-tribal members under the second exception to the test announced in the 1981 Supreme Court case, *Montana v. United States*. This “Montana exception” provides that tribes may retain inherent civil authority where nonmember “conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.”

Showing such authority under this Montana Exception has proven time-consuming and costly for tribes seeking TAS status, and it is one of the central reasons that today only 40 tribes have gained TAS status. The EPA now proposes to “conclude definitively that section 518 [of the CWA] includes an express delegation of authority by Congress to Indian tribes to administer regulatory programs over their entire reservations.” (Emphasis added) In effect, this would eliminate the need for tribes to prove inherent authority under the second Montana Exception, and thus allow tribes to implement the congressional delegation of authority. This is great news for tribes, as it streamlines the TAS application process and reduce the burden on tribes.

This interpretive rule isn't final yet, as its deadline for filing requirements is 10/06/2015. Tribes should expect the interpretive rule to be final in the next year.

A copy of the US EPA's Draft Reinterpretation fact sheet can be found at: <http://1.usa.gov/1KSaADq>

## New Kickapoo Environmental Office Director

The Kickapoo Environmental Office (KEO) is happy to announce Kickapoo tribal member, Eric Sheets, as our new Director, as of mid-May.

Mr. Sheets attended undergraduate at Washburn University and then attended Lewis & Clark Law School in Portland, Oregon. While at Lewis & Clark—the top environmental law program in the country—Mr. Sheets studied Indian and environmental law with an emphasis on tribal water rights. Mr. Sheets is excited to continue and further KEO's top-performance in the region and to aid in producing quality environmental policy for the Tribe.

Welcome, Eric!



## Kickapoo Words Translation Puzzle

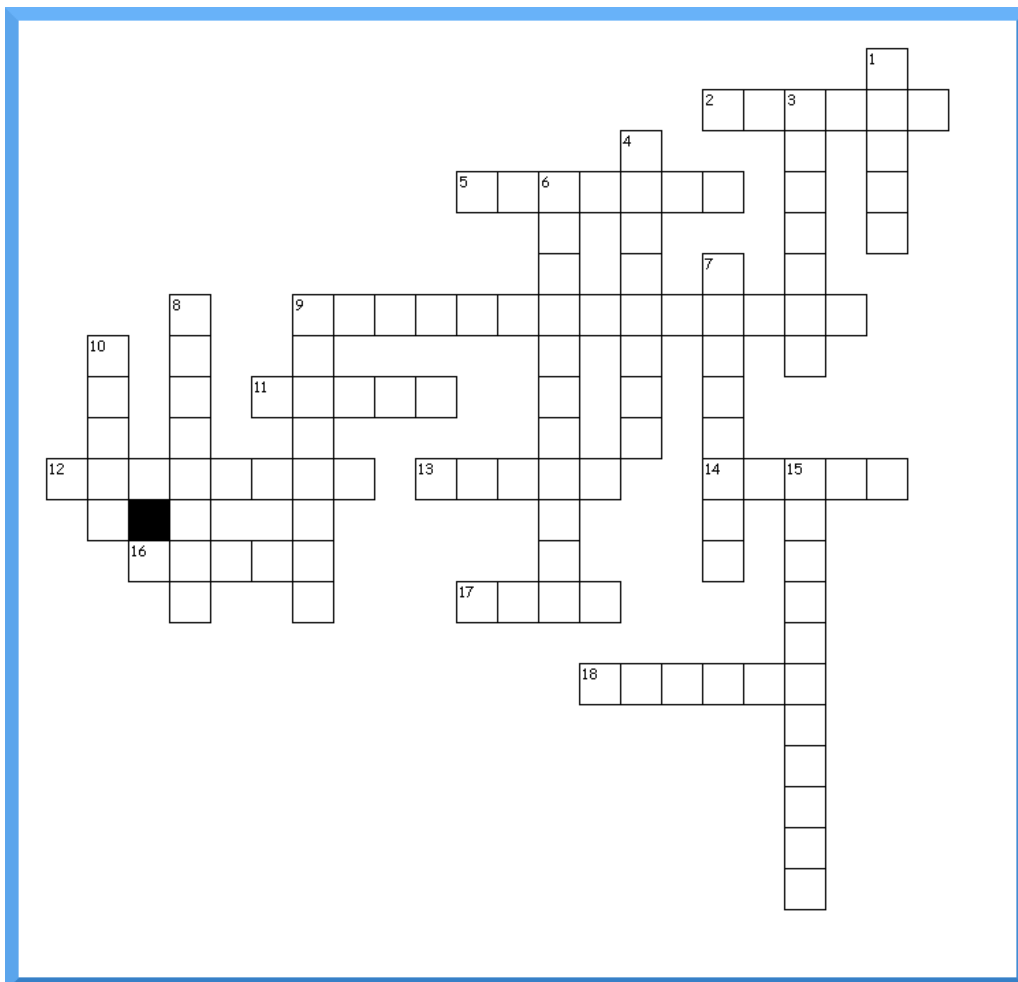
### Clues

#### Across

2. mesweeha
5. eethepanimisi
9. mesihkeeha
11. poohkwiika
12. waapanahkiiha
13. askihkii
14. mekethia
16. neekotikasea
17. onakeehkwi
18. aayeeniiha

#### Down

1. wasaaha
3. miisiikwaaha
4. meekwahkiki
6. nemesooaha
7. keetahteethi
8. kiikaapoa
9. anika
10. nepi
15. noohkometha



ACROSS: 2. rabbit, 5. dogwood, 9. snappingturtle, 11. quail, 12. delaware, 13. earth, 14. eagle, 16. horse, 17. bark, 18. possum.  
DOWN: 1. sioux, 3. buffalo, 4. mountain, 6. grandfather, 7. frybread, 8. kickapoo, 9. squirrel, 10. water, 15. grandmother.

## EPA Treaty Consultation

By Eric Sheets, Director

On the 30th anniversary of the Environmental Protection Agency's (EPA) 1984 Indian Policy, and as part of its commitment to engage with tribes as sovereign governments with a right of self-government, the US EPA has very recently released the *"EPA Policy on Consultation and Coordination with Indian Tribes: Draft Guidance for Discussing Tribal Treaty Rights."* The EPA is currently consulting with tribes through October 14, 2015 and seeking input on two basic questions: 1) whether this draft guidance provides enough to inform the EPA about treaty rights and how they may affect EPA actions or decisions in particular areas governed by such treaties, and 2) whether the questions within the draft guidance are adequately defined in scope and range of questions the EPA should ask.

In underscoring the importance of tribal treaty rights, EPA Administrator Gina McCarthy recently stated:

"Under the US Constitution, treaties have the same legal force as federal statutes. And the United States' government-to-government relationship with and trust responsibility to federally recognized Indian tribes reinforces the importance of honoring these treaty rights. As such, the EPA has an obligation to honor tribe rights and resources protected by treaties. While treaties do not expand the EPA's authority, the EPA must ensure its actions do not conflict with tribal treaty rights. In addition, EPA programs should be implemented to enhance protection of tribal treaty rights and treaty-covered resources when we have discretion to do so." (emphasis added)

## Tribal Wastewater Lagoon Systems: What They Do for You

By Jim Reitz, Environmental Specialist

There are currently two federally permitted wastewater lagoon systems on the Kickapoo Reservation. The largest system is just south of Highway 20, below the water treatment plant, consisting of four stabilization lagoons. The second system is located northeast of Housing Site 1, also consisting of four separate lagoon cells. These two systems are different than the other wastewater lagoons on the reservation specifically because they periodically discharge stabilized water back into the environment.

### So what are wastewater stabilization lagoons?

They are man-made earthen structures in which natural purification processes occur under “controlled conditions” with the purpose of breaking down and stabilizing raw sewage. The stabilization process decomposes the organic matter, so that if the water is discharged back into the environment, it will not contaminate the receiving fields or streams.

Naturally occurring bacteria, both aerobic and anaerobic, make up the powerhouse that does the job of decomposing and digesting the organic matter. Aerobic bacteria are those which require oxygen to survive and multiply. These bacteria are found in the upper layers of the lagoon. Anaerobic bacteria can live in the absence of oxygen and are found in the lower layers.

Raw sewage from homes and businesses enters the system at the first lagoon called the primary treatment cell where the digesting process begins. The organic solids of sewage are animal and vegetable in origin—they contain carbon, hydrogen and nitrogen. This material is subject to decay and decomposition and is the source of food for the bacteria.

The inorganic solids entering the primary cell consist of minerals, like silt and sand. These are not digestible and will settle to the bottom forming a sludge layer.

The primary cells of the permitted lagoons have two solar powered water circulators floating on them. These help circulate water from the lower levels of the lagoon to the surface, improving the efficiency of the digestion process.

Wastewater moves from the primary cell to the secondary treatment cells where bacteria continue the digestion of suspendable solids. This process gradually increases the oxygen content and decreases the nitrogen content. The final cell of the system is called the clarification stage where suspendable solids and algae settle out. The desired length of time from entry into the wastewater lagoon system until it is discharged into the environment from the final cell is 180 days.



Clarification stage, No. 4, Lagoon System 1, North of the Trading Post, looking Northeast. This is the final stage of the stabilization process before the clarified water is discharged.

## Tribal Lagoon Systems, continued

What is required by our federal permit?

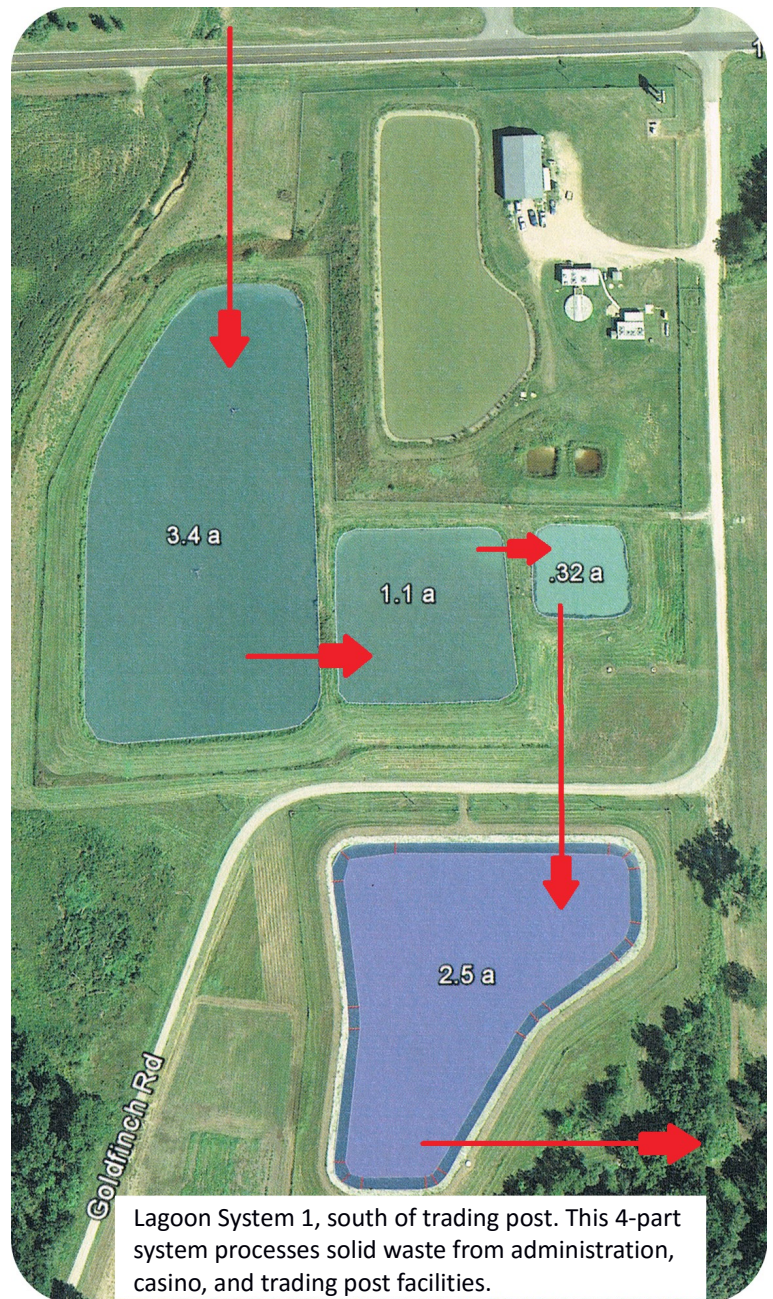
- Pre-Discharge sampling procedures.
- Report quarterly of any discharges.
- Fencing around lagoon site and warning signage.
- Control vegetation in and around lagoon cells.
- Follow inflow and outflow monitoring parameters.
- Monthly monitoring for breaches of cells, and animal damage to berms.
- Prompt repairs of any structural damage for whatever reason.
- Submit annual sludge report.
- Comply with all conditions of the permit.

### What can you do to keep the system healthy?

Do your best at your place of employment and your home to conserve the water that goes down the drain into your wastewater lagoon systems at housing Site No. 1 and the K-20 location. Too much water into the lagoons can decrease the desired 180-day retention time for ideal treatment. Also, to help keep the biology of the system optimal, please do not pour toxic material down the drain or in the toilet unless they are approved for septic systems. Good bacteria and algae are living organisms that need good environments to grow and multiply.

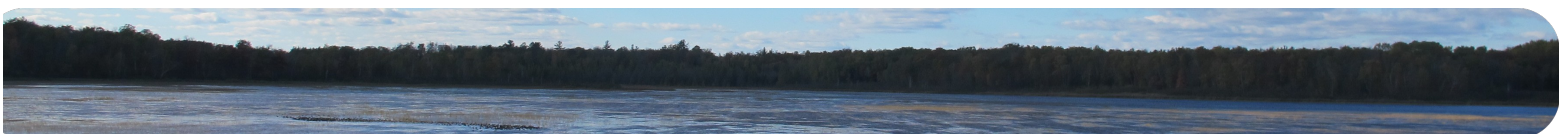
Keep in mind that all the things flushed down the toilet will end up in the primary lagoon cells. If they clog up a pipe or get caught in the equipment, we will have the privilege of dealing with it.

Your wastewater lagoon systems are good systems. They are usually economical to construct and operate and do not require expensive equipment like lift stations—they work by gravity flow. They have long potential design life and when used correctly, are the most trouble-free of all the treatment processes.



Lagoon System 1, south of trading post. This 4-part system processes solid waste from administration, casino, and trading post facilities.

If you have any questions or concerns about wastewater lagoon operations, please contact Jim Reitz at 785-486-2601, ext. 3 or contact the maintenance department.



## Milkweed and Our Connection to the Arctic Circle

By Crystal Wabnum, Operations Specialist

The Kickapoo Tribe in Kansas is currently receiving BIA funding to assess and plan for the impacts of climate change on the Kickapoo Reservation. During the summer, our office hosted interns who conducted informal interviews with community members to gauge environmental changes observed over the years by our elders. More obvious changes observed include seeing fewer milkweed, berry and morel mushroom patches on the rez. Folks noted that weather patterns have changed, although they're hesitant to attribute these shifts directly to climate change.

Cleta LaBrie, one of the Climate Change Interns, reflected that many of the community members she spoke with shared sentiments that when they were kids, the weather was more consistent and not as extreme as it is now.

According to Scott Weir, a contractor working to complete the Tribe's climate change adaptation plan, these sentiments are in line with what the hard data reveals. K-State has Kansas historical weather data spanning 120 years—from 1890 to 2009. His analysis of the Horton area data shows that temperatures have increased by 0.17 degrees per decade. There has been a sharper increase in precipitation, more drought events, and less snow than has occurred in the past, which he says is clear evidence of warming.

While some community members hesitate to directly attribute the changing weather patterns they've experienced to global warming, our brothers and sisters in the Arctic Circle are very quick to make that connection, as their villages are on the front lines of the most extreme impacts of climate change.

Meet Maija Katak Lukin, Tribal Environmental Program Manager at the Maniilaq Association and a participant of the Institute of Tribal Environmental Professionals conference held in Minneapolis last month, where we met. She is an Inupiat from the Sisululik Camp, a rural tribal community located 10 miles outside of Kotzebue, Alaska, a town hub of the Inupiat people. Just weeks ago, the Obama Administration made

history as the first Presidential Administration to visit the Arctic Circle.

During the interview for this article, Maija, who doubles as Mayor of Kotzebue, was eating caribou for lunch: "Migration is changing. Weather patterns are warming. You can see coastal erosion because it's right there. People's homes are being washed into the ocean."

During the Presidential visit, her community hosted a press conference attended by staff from the New York Times and the Washington Post, among others. Tribal Presidents from each village were in attendance as well as Presidents from each regional board.

"What benefited the region more than the President coming was that they [the tribal community members] were able to tell the world in their own words what they've been facing for 10 years now. A lot of times nobody listens to us because we're so far away, and our population is only 7,000."

I informed her that our community is experiencing changes as well, but that our environment is not as sensitive to rising temperatures and shifting precipitation patterns as the Arctic Circle.

The caribou population has decreased by half in the last decade because of climate change. Maija described the dynamic between those who subsist off of the caribou hunt and those in the lower 48 states who hunt primarily for sport or to partially supplement their primarily store-bought diets. Her people are faced with the reality of deciding to prioritize one necessary purchase over another as a result of the dwindling caribou population: low quality beef at \$8.99 a pound or heat their home?

"Which are you going to choose? A \$2.00 Hot Pocket at the store or a \$4.00 loaf of bread? Milk is \$12.95 a gallon. On sale, it's \$9.00. I drive a Ford Explorer and filled up my tank at \$7.99 a gallon. It costs nearly \$150 for one tank."

Unlike hunters who don't subsist on the caribou they hunt, people in her community are forced to eat cheap food their bodies aren't accustomed to supplement their diets as moose, musk ox, seals, and caribou aren't as bountiful as they once were. Living off the land is a way of life for Inupiat people, but it's also a financial necessity, one that is being impacted by climate change in a very real and threatening way right now.



## New Kickapoo Environmental Office Operations Specialist

The Kickapoo Environmental Office is pleased to announce Crystal Wabnum as our new Operations Specialist. In this role, Crystal helps ensure that the office's program work runs smoothly and professionally while also maintaining grant compliance. She is a Prairie Band Potawatomi and Cherokee of Mexican descent in addition to being a Kickapoo tribal member. Having earned her BA in Sociology from Fort Lewis College, she comes to us with a background in grants management, organizational development and social justice advocacy.

Welcome, Crystal!



## Community Greenhouse Update

The Kickapoo Community Greenhouse project is near completion. The Environmental Office finished construction of the greenhouse in early summer and progress has been slow due to budgetary constraints. However, a number of things have been finished: a 5-foot by 5-foot ventilation fan has been procured and hung on the structure's East side, power has been run to it, a 1500 gallon water collection unit has been placed, the ground inside the structure has been tilled, and a compost area has been constructed.

Further plans include constructing a rain recovery system to collect rain water which will be drawn into an automated plant feeding system using pumps, filters, and above-ground soaker hoses. To enable winter growing, 6-inch corrugated tubes will be buried in a series of trenches 4 feet deep, and then air from inside the structure will be drawn through the tubes and blown back into the structure to heat the air. Supplemental heating will be provided by a propane-powered heater.

The ultimate goal for the community greenhouse is to provide fresh produce to the Kickapoo Senior's Center and to anyone who volunteers for the project.

The Office will partner with the Kickapoo Boys & Girls Club under their Healthy Communities grant from the Center for Disease Control, which will provide additional funding to maintain the project throughout the year.

If you would like more information on the Community Greenhouse Project, please contact the Environmental Office at 785-486-2601.





# KICKAPOO ENVIRONMENTAL OFFICE

**Kickapoo Environmental Office  
1107 Goldfinch Road  
Horton, KS 66439-9537  
(785) 486-2601**